IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

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:: ORDER ::

(1) Chetan Vs. Civil Judge (SD) & Ors.

S.B. CIVIL WRIT PETITION NO.1453/2006.

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(2) Jai Prakash Vs. Civil Judge (SD) & Ors.

S.B. CIVIL WRIT PETITION NO.1454/2006.

...

Date of Order :: 24th April 2006

PRESENT

HON'BLE MR. JUSTICE DINESH MAHESHWARI

Mr. Dron Kaushik, for the petitioners.

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BY THE COURT:

Both these writ petitions directed against the common order dated 22.02.2006 passed by the Civil Judge (Senior Division), Sangaria in two civil suits No.66/1998 and No.65/1998 involving similar facts and common questions were heard together and are taken up for disposal by this common order.

Brief facts relevant for determination of the questions involved in these writ petitions are that the petitioners herein are defendants in respective Civil Suits for recovery of money filed by the same plaintiffs (respondent Nos. 2 to 5 herein). The respective suits having reached the stage of final hearing, the petitioners filed similar nature applications in these suits with the submissions that the plaintiffs have filed three other money recovery suits against the defendant-petitioners and their family members which were pending in the court of Additional District Judge, Sangaria; and while stating the particulars of such civil suits and the fact that in one such suit the petitioners were the defendants and in other suits brother of the petitioners, Om Prakash and his wife Madhu Goyal were defendants, the petitioners submitted that substantial amount of money was involved in the said suits but they were still at evidence stage and further proceedings therein were not taken up for want of Presiding Officer. The petitioners contended in the application that if decision would be rendered in the present civil suits, it would lead to disclosure of their entire defence that would be utilized by the plaintiffs in the aforesaid other civil suits and would lead to irreparable loss

to the defendants and their family members. On such grounds it was prayed that the proceedings in the present suits be stayed till evidence was recorded in the aforesaid three other civil suits. The application was duly replied by the plaintiffs pointing out that the different civil suits were based on different causes of action and there was no such issue which was directly and substantially in issue between the parties in any previously instituted suits for which the proceedings in the present civil suits were required to be stayed. It was also pointed out that one civil suit against Manoj, another brother of the defendant had already been decreed by the same court.

The learned Civil Judge (Senior Division), Sangaria, after hearing the parties was clearly of opinion that there was no reason or justification for staying the proceedings in the present civil suits and found that the applications were not bonafide and were moved only to unnecessarily delay the proceedings. The applications were accordingly rejected by the impugned order dated 22.02.2006 (Annex.5) on 500/- rupees costs each.

Assailing the order dated 22.02.2006 it has been contended in these writ petitions on behalf of the defendant-petitioners that even if the provisions of Section 10 of the Code of Civil Procedure (CPC) do not apply to the applications moved by the petitioners, having regard to all the circumstances of the case and multiple litigations having been foisted upon the petitioners and their family by the plaintiffs, in order to prevent the plaintiffs from taking undue advantage of the submissions and defence of the petitioners in the course of the present civil suits in other litigation, it was expedient in the interest of justice that the proceedings in the present suits were stayed till trial was completed in the other suits of similar nature. It was further submitted that having regard to the peculiar facts that money recovery suits are sought to be prosecuted by the same plaintiffs in relation to the transactions allegedly entered into during the life-time of Mohan Lal, husband of the plaintiff No.1 and father of the plaintiff Nos. 2 to 4, in view of the similarity of allegations and so also similarity of the nature of defence of the petitioners and their family members, the applications were submitted bonafide for stay of the proceedings particularly to prevent the plaintiffs to obtain undue advantage of the present suits having reached a ripe stage

and the other suits having not progressed and the learned trial court has acted illegally in not staying further proceedings in the present civil suits.

Having heard learned counsel for the petitioners and having perused the material placed on record, this Court is satisfied that these writ petitions remain totally bereft of substance and deserve to be dismissed.

It has not been disputed that the provisions of Section 10 CPC do not apply to these cases; and the prayer for stay of civil suits has been made with reference to Section 151 CPC particularly with the submissions that the plaintiffs may not be permitted to take undue advantage of the defence taken by the petitioners in the present civil suits. The theory of any so-called advantage being taken by the plaintiffs of the defence adopted by the defendants in the present civil suits is itself wholly unfounded and rather preposterous. These are civil suits based on different causes of action against different defendants and even if the petitioners allege themselves to be the parties in other suit No.61/2002 filed against firm M/s. R.L. Goyal & Sons, it is apparent that the said suit has

been filed in relation to a different transaction, may be with the same person, namely the predecessor of the plaintiffs. This Court is clearly of opinion that in the fact situation of the present cases there is no reason or justification for the petitioners to claim that all such civil suits ought to be tried simultaneously. Causes of action being essentially different in all the civil suits there does not appear any failure of justice being occasioned by separate trials; and on the contrary if at all such causes of action would have been clubbed, may be a question of embarrassment and fair trial would have been raised. Such separate trials being taken up by different courts with reference to their pecuniary jurisdiction, it cannot be claimed that their stage of progress have to be synchronized; or that decisions have to be rendered concurrent. Moreover, the defendants have already put in their written statements and evidence of the parties has also been recorded in the present suits. The remote suggestion of embarrassment or so-called disclosure of defence is entirely inapt in the context of the trial of a civil suit and is fundamentally baseless when the evidence has already been completed and the matters are fixed for final hearing. The applications were neither justified nor bonafide; and have rightly been rejected.

Having examined the considerations adopted by the learned trial judge, this Court is satisfied that the learned Judge has not committed any illegality or irregularity in rejecting the applications moved by the petitioners. There is no substance in these writ petitions and no case for interference under Article 227 of the Constitution of India is made out.

The writ petitions fail and are, therefore, dismissed summarily.

(DINESH MAHESHWARI), J.

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